

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CURTIS WILLIAMS,

Movant,

-against-

THE UNITED STATES,

Respondent.
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KIMBA M. WOOD, United States District Judge:

On January 8, 2020, this Court appointed Ezra Spilke to assist defendant Curtis Williams (“Defendant”) in preparing an amended petition under 28 U.S.C. § 2255. (ECF No. 7.) This Court ordered Mr. Spilke to submit an Amended Petition by March 9, 2020. (ECF No. 4.) On March 11, 2020, Mr. Spilke informed the Court, by email, that he had recorded an incorrect deadline for the submission in his calendar; that he was on trial; and it was unlikely that he would file an Amended petition. Mr. Spilke asked the Court for a week to confirm that he would not file an Amended Petition, and the Court granted his request. (ECF No. 8.) A week later, on March 18, 2020, Mr. Spilke notified the Court, by letter, that his client does not intend to file an Amended Petition. (ECF No. 9.)

A district court’s denial of a habeas petition must be vacated under Rule 60(b)(6) of the Federal Rules of Civil Procedure if the defendant’s “lawyer agreed to prosecute [the] habeas petitioner’s case, abandoned it, and consequently deprived the petitioner of any opportunity to be heard at all.” *Harris v. United States*, 367 F.3d 74, 81 (2d Cir. 2004). At present, the record is inadequate as to whether Mr. Spilke has discharged his duties to his client within the meaning of

SEQ CHAPTER 1 of 1
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DATE FILED: _____

19-CV-11402 (KMW)

16-CR-00256 (KMW)

ORDER

Harris. To ensure that the Court's eventual judgment on Defendant's habeas petition is valid, the Court orders Mr. Spilke to inform the Court, by Affidavit, by March 26, 2020, of the following:

- (1) Whether Mr. Spilke has discussed the petition with his client,
 - a. Orally or in writing? If in writing, Mr. Spilke shall send the court a copy of any relevant writing(s) by March 26, 2020.
 - b. When?
 - c. What was discussed?
 - d. Does anything remain to be discussed?
- (2) Whether Mr. Spilke has done any legal research regarding the petition.
- (3) Whether Mr. Spilke believes any additional legal arguments could be made on Defendant's behalf, beyond those already articulated in Defendant's *pro se* filings?

SO ORDERED.

Dated: New York, New York
March 19, 2020

/s/ Kimba M. Wood
KIMBA M. WOOD
United States District Judge